

REMARKS

This Preliminary Amendment as well as the after final response filed on April 3, 2007 constitute the proper Submission with the RCE being concurrently filed and fully complies with M.P.E.P. § 706.07(h)(II). Prosecution has been reopened with the filing of the RCE.

Status of the Claims

Claims 1, 9 and 10 have been amended herein. New claim 11 has been added. Claim 8 was previously canceled. Thus, claims 1-7 and 9-11 are pending.

No new matter has been added with these amendments to the claims. Applicants also note the definition of a bacteriocin at page 3, lines 30-32 of the present specification.

Based upon the above considerations, entry of the present amendment is respectfully requested.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Issues Under 35 U.S.C. § 112, Second Paragraph

Claims 1-2 and 5-7 stand rejected under 35 U.S.C. § 112, second paragraph, for various reasons related to indefiniteness (see pages 2-3 of the Office Action). Applicants respectfully note that this rejection has been addressed in the April 3 response. Therefore, Applicants respectfully request consideration of the remarks in the April 3 response as they have not been considered as indicated in the Advisory Action of May 1, 2007. Applicants add the following remarks.

With respect to claim 1 and the recitation of “the inhibitory properties of said strain and secretory products thereof being maintained,” the Examiner states that the previous arguments have been considered but that “there is no clear correlation in the invention as claimed between ‘secretory products’ and the claimed ‘antimicrobial agent’” (see page 2, lines 4-6 from the bottom of the Office Action). In response, Applicants respectfully refer the Examiner to claim 1 as presented herein wherein there is a clear correlation to the “antimicrobial agent.” Reconsideration and withdrawal of this rejection are respectfully requested.

Issues Under 35 U.S.C. §§ 102(b) and 103(a)

Claims 1, 2, 5-7 and 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by K. Arihara *et al.* (“Salivacin 140, a novel bacteriocin from *Lactobacillus salivarius* subsp. *salicinius* T140 active against pathogenic bacteria,” *Letters in Applied Microbiology*, Vol. 22, pp. 420-424 (1996); hereinafter “Arihara”) (see pages 6-7 of the Office Action). Further, claims 1, 2, 5-7 and 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as obvious over B. ten Brink *et al.* (“Antimicrobial activity of lactobacilli: preliminary characterization and optimization of acidocin B, a novel bacteriocin produced by *Lactobacillus acidophilus* M46,” *Journal of Applied Bacteriology*, Vol. 77, pp. 140-148 (1994); hereinafter “ten Brink”) (see pages 7-8 of the Office Action).

Applicants respectfully request consideration of the remarks in the April 3 response as they have not been considered as indicated in the Advisory Action of May 1, 2007.

Conclusion

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Eugene T. Perez, Reg. No. 48,501, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: May 14, 2007

Respectfully submitted,

By ma
MaryAnne Armstrong
Registration No.: 40,069
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road, Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant